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IN THE

Supreme Court of the United States

October Term, 1964

No. 881

EUGENE ALEXANDER GRAHAM, JR.,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

Statement of the Case.

Petitioner was convicted in the Municipal Court of the Los Angeles Judicial District, State of California, of a violation of subdivision 2 of Section 21658 of the California Vehicle Code. Petitioner appealed from the judgment of conviction to the Appellate Department of the Superior Court for Los Angeles County. That court affirmed the judgment without written opinion. Petitioner then filed a petition for rehearing and for certification to the District Court of Appeal. This petition was denied without opinion on November 9, 1964.

Issues Raised by the Petition.

Petitioner now seeks a writ of certiorari in this court on the ground that he was denied his constitutional rights of due process and equal protection af-

forded by the Fourteenth Amendment to the Constitution of the United States. His contention is based upon errors allegedly committed by the trial court in excluding certain evidence and errors committed during sentencing.

I.

The Refusal of the Trial Court to Permit Petitioner to Introduce Irrelevant and Immaterial Evidence Did Not Deny Him His Constitutional Rights of Due Process and Equal Protection.

Petitioner at the time of trial contended that the police officer made several errors while recording information on the traffic citation. These errors had nothing to do with the facts of the traffic violation. They concerned primarily the description of petitioner's vehicle and the number of passengers he was carrying. In order to prove the existence of these errors petitioner subpoenaed five witnesses to appear at the trial. The trial judge exhaustively examined these witnesses and determined they had been nowhere near the scene of the violation nor had they any knowledge of the facts surrounding the violation.

The court's searching examination further disclosed that two witnesses, Mr. Farley and Mr. Espinoza, could testify only that at a time and place distant from the scene of the violation, petitioner had been in the company of his wife and two children [R. T. p. 43, lines 13-26; p. 49, lines 5-26].* This testimony had nothing to do with the issue of the case and was "purely collateral" [R. T. p. 19, lines 1-2].

*R. T. refers to the reporter's transcript in its original page numbering.

Petitioner wished another witness to testify from Department of Motor Vehicle records to the number of doors on petitioner's vehicle and the date of its registration [R. T. p. 9, lines 10-17]. Another witness was to testify from the records of the City Engineer to the "make up" of the area (Petn. p. 40, lines 7-26; p. 41, lines 1-25).

The fifth and last witness, Mr. Reece, was excused when petitioner agreed his testimony was not material (Petn. p. 37, lines 4-5).

After determining the evidence each witness was to present to the jury, the trial court correctly ruled that such evidence was irrelevant, immaterial and constituted an attempt to impeach the officer's testimony on collateral matters. The court also properly refused to receive the traffic citation into evidence for the same reasons. (*People v. Dye*, 75 Cal. 108; *People v. McDaniel*, 59 Cal. App. 2d 672; *People v. Wells*, 33 Cal. 2d 330.)

Petitioner does not dispute the fact that as to the issue of the case (*i.e.*, whether he did or did not make an unsafe lane change) he was afforded the fullest opportunity to present any and all relevant evidence. Petitioner's only complaint pertains to the refusal to admit irrelevant and immaterial evidence. Clearly such a refusal did not violate his right of due process under the Fourteenth Amendment. (*Muser v. Magone*, 155 U.S. 240; California Constitution, Article VI, Sec. 4½; 28 U.S.C. Sec. 2111.)

II.

In Order That It May Be Said That Due Process of Law Has Been Denied to Petitioner, It Must Affirmatively Appear Not Only That the Trial Court Committed Error, but Further, That Such Error Was so Gross as to Amount to No Trial at All.

Assuming for the sake of argument that the trial court committed error by refusing to allow into evidence material which the court considered improper, nevertheless, such error would not raise a constitutional question within the meaning of the Fourteenth Amendment.

The Constitution of the United States does not guarantee to a defendant a trial free from error. Nor does the fact that such error is prejudicial necessarily transform an otherwise fair trial into one that offends the due process clause of the Fourteenth Amendment.

> "It does not do so unless it has the effect of converting what was otherwise a fair trial into one which is repugnant to an enlightened system of justice."
>
> *Vandergrift v. United States,* 313 F. 2d 93.

The alleged errors complained of even if true could hardly be said to have transformed petitioner's trial into one which was "repugnant to an enlightened system of justice."

Many criminal trials contain some error but this does not mean such error violates the constitutional rights of the person convicted.

Lisenba v. California, 314 U.S. 219.

> "An endeavor is made to magnify the error in these trials to constitutional proportions by asserting that the refusal of the proffered evidence robbed this trial of vitality by depriving defendants of their only real defense. But as much might be said of many rulings during a criminal trial. Defendants received throughout an opportunity to be heard and enjoyed all the procedural guarantees granted by the Constitution. Error in ruling on the question of law did not infect the trial with lack of procedural due process."
>
> *Sunal v. Large,* 332 U.S. 174, 182.

The Supreme Court of the United States does not sit to review supposed errors of law in the admission or exclusion of evidence. Evidentiary questions are matters left to the states.

> *Chaplinsky v. New Hampshire,* 315 U.S. 568; *Jacobson v. Massachusetts,* 197 U.S. 11.

III.

In Considering What Shall Constitute an Appropriate Sentence the Trial Court Is Entitled to Consider a Wide Variety of Factors Including Information Concerning the Convicted Person's Life and Characteristics.

Petitioner contends that the trial court in sentencing him considered ". . . a matter upon which the defendant had not been formally arraigned . . ." (Petn. p. 6).

A similar contention was made in the case of *Williams v. Oklahoma,* 358 U.S. 576, and there the court held that,

> "Once the guilt of the accused has been properly established, the sentencing judge, in determining the

kind and extent of punishment to be imposed, is not restricted to evidence derived from the examination of witnesses in open court but may consistently with the Due Process Clause of the Fourteenth Amendment, consider responsible unsworn or 'out of court' information relating to the circumstances of the crime and to the convicted person's life and characteristics."

Williams v. New York, 337 U.S. 241.

IV.

Where the Trial Court Imposed a Sentence That Fell Within the Maximum Statutory Limits, the Petitioner Cannot Be Heard to Complain That Such Sentence Was Excessively Severe.

Petitioner contends "there is no place in the record or any portion of the record which in any way mentions the defendant's driving record as warranting this kind of punitive action taken." (Petn. p. 7, lines 4-7).

A sentence is legal so far as it is within the provisions of law and the jurisdiction of the court over the person and offense.

United States v. Pridgeon, 153 U.S. 48.

Within the statutory limit, the sentence imposed is exclusively within the discretion of the trial court.

Fienhercy v. United States, 2 F. 2d 955.

We must assume that the facts before the court justified the exercise of the court's discretion in the instant case.

V.

The Supreme Court of the United States Should Not Take Jurisdiction to Review a Judgment Where No Opinion Was Delivered by the Highest State Court, and Where Such Judgment Is Sustainable on Nonfederal Grounds.

No opinion was delivered by the highest state court that could review the judgment [R. T. p. 1].

In *Stembridge v. State of Georgia,* 343 U.S. 541, it was held that, where the highest court of the state delivers no opinion and it appears the judgment might have rested upon a nonfederal ground, this court will not take jurisdiction to review the judgment.

The judgment of the Appellate Department of the Superior Court as to petitioner's contentions that the exclusion of certain evidence deprived him of due process and that he had been improperly sentenced, could have rested on the nonfederal ground that these contentions were not raised in the trial court.

> "It is a general rule of appellate review early established and long adhered to, that questions not raised in the trial court will not be considered on appeal."
>
> *People v. Alvidrez,* 158 Cal. App. 2d 299, 300 P. 2d 557;
>
> *People v. Robinson,* 226 A.C.A. 798.

Conclusion.

The petition for writ of certiorari does not disclose that there has been a violation of petitioner's rights under the Federal Constitution nor that petitioner seasonably asserted the purported constitutional questions, nor that the highest court of the State of California passed upon a constitutional question in reaching its decision.

It is urged that petitioner presents no substantial question for decision by this court and that the petition should be denied.

Respectfully submitted,

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